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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/555,987	09/11/2000	John P. Vanden Heuvel	7024465PUR99	9345

7590

07/18/2003

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EXAMINER

HUI, SAN MING R

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 07/18/2003

29

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/555,987

Applicant(s)

VANDEN HEUVEL ET AL.

Examiner

San-ming Hui

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 26 June 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

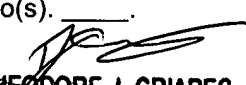
NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-22.Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
THEODORE J. CRIARES  
PRIMARY EXAMINER  
GROUP 1200/600

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's rebuttal arguments averring the teachings of de Boer being ambiguous have been considered, but are not found persuasive. The passage of de Boer, although short and precise, is not ambiguous. As discussed in the previous office actions, de Boer clearly teaches the product that containing linoleic acid, both conjugated or non-conjugated form, are useful in treating diabetes. Examiner notes that product that contains linoleic acid, both conjugated and non-conjugated, are in particular useful in treating diabetes.

Applicant's rebuttal arguments averring the cited prior art's failure, especially Semenkovich, Steinhart, and Cook, to teach or provide the motivation to employ CLA in treating diabetes per se have been considered, but are not found persuasive. Examiner notes that the cited prior arts provide a motivation to employ CLA to treat the complication of diabetes, namely arteriosclerosis. Treating the complication of diabetes would be considered as treating diabetes. For example, antihistamine, decongestion, and anti-cough medicine are effective to treat common cold; however, they are treating the symptom of common cold. They did not treat the viral infection per se, nevertheless they are treating common cold. Treatment includes any modalities in managing the disease such as prophylaxis of complication, relief of symptoms, eradication of the etiologies, improvement the quality of life of the patients, and etc. Therefore, one of ordinary skill in the art would be reasonably expected to see the treatment or improvement of the complications associated with diabetes as treating diabetes. Applicant apparently misunderstood the rejections under 35 USC 103 over Semenkovich, Steinhart, and Cook. The rejection is not trying to make an inherency arguments based on three cited prior art. As discussed above, treatment of diabetes includes the treatment of the complication associated with the disease.